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Counsel to Pagosa Partners III, Ltd.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 23-13359 (VFP)

**LIMITED OBJECTION OF PAGOSA PARTNERS III, LTD.
TO DEBTORS' NOTICE TO CONTRACT PARTIES TO POTENTIALLY
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Pagosa Partners III, Ltd. ("Pagosa Partners"), by and through its undersigned counsel, hereby submits this limited objection (the "Limited Objection") to the Debtors' *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 714] (the "Cure Notice"). In support of this Limited Objection, Pagosa Partners respectfully states as follows:

LIMITED OBJECTION

1. Pagosa Partners is the landlord with respect to the lease between Bed Bath & Beyond, Inc. (the "Debtor") and Pagosa Partners for the real property located at 2624 W Loop

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083

289, Lubbock, TX (the “Lease”),² which appears as line item 1450 on the Cure Notice. The Cure Notice asserts an incorrect cure amount of (\$217.50). The correct cure amount is no less than \$25,679.87, consisting of a \$25,780.75 unsatisfied mechanic’s lien (the “Lien”) for which the Debtor is responsible, less a \$100.98 credit reflected on Pagosa Partners’ books and records.

2. Attached hereto as **Exhibit A**, is a copy of the Lien for amounts due by the Debtor to Advanced Systems, Inc. for work done for the Debtor pursuant to a contract between the parties entered into on March 1, 2022. As of the filing of this Limited Objection, the Lien remains unsatisfied. Section 23.2 of the Lease provides that the Debtor, as tenant, is obligated to satisfy any mechanic’s liens placed on the premises during the term of the Lease.

3. The Debtor also remains obligated for any accrued, but unbilled, amounts including, but not limited to, attorneys’ fees and year end CAM and tax reconciliation amounts. The Debtor must reserve for these unbilled amounts, or any order authorizing assumption and assignment of the Lease must provide that the assignee of the Lease is liable for such amounts.

4. Pagosa Partners reserves its right to amend this Limited Objection to include additional fees and expenses which continue to accrue and any other obligations that arise and/or become known to Pagosa Partners prior to assumption or assumption and assignment of the Lease.

RESERVATION OF RIGHTS

5. Pagosa Partners reserves its rights to: (i) have a reasonable opportunity to receive and review adequate assurance information; (ii) request additional information if the adequate assurance information is insufficient; (iii) schedule and conduct any necessary

² A copy of the Lease is not attached hereto, as Pagosa Partners understands that the Debtor is in possession of same. To the extent the Debtor requests a copy of the Lease from Pagosa Partners, one will be provided.

discovery based on the adequate assurance information (or lack of information) received; and
(iv) file an objection to the adequate assurance information (or lack of information).

6. Pagosa Partners also reserves its rights to supplement, amend, or modify this Limited Objection at any time prior to the effective date of any assumption and assignment of the Lease. Nothing herein is intended to be a waiver by Pagosa Partners of any right, objection, argument, claim, or defense with respect to any matter, all of which are hereby expressly reserved.

Dated: June 26, 2023
New York, NY

/s/ Eric Chafetz
Eric Chafetz, Esq.
Phillip Khezri, Esq.
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 262-6700
Facsimile: (212)-262-7402
Email: echafetz@lowenstein.com
Email: pkhezri@lowenstein.com

Counsel to Pagosa Partners III, Ltd.

EXHIBIT A

Levelset
1121 Josephine St
New Orleans LA 70130



Recording Requested by Advanced Systems Inc
Please Return To:
Advanced Systems Inc
c/o Mail Center
9450 SW Gemini Dr #7790
Beaverton, Oregon 97008-7105
Reference ID: S5WVM8MJ99S5

SPACE ABOVE FOR RECORDER'S USE

AFFIDAVIT OF LIEN BY ORIGINAL CONTRACTOR

State of Texas | County of Lubbock County

IN ADDITION to a Statutory Lien Pursuant to V.T.C.A. Property Code § 53.001 *et. seq.*, the Lien Claimant Claims a Constitutional Lien pursuant to Section 37 of Article 16 of the Texas Constitution to the full extent such a lien may be available.

Claimant: Advanced Systems Inc

(Mailing Address):
6627 Commerce Pkwy.
Woodstock, GA 30189
(770) 591-4655

(Physical Address): The same as Mailing if blank

Months Services Furnished

The Claimant provided Services for which payment is requested in the following months:

March 2022 - January 2023

First Date Labor and/or Materials Furnished:
March 01, 2022

Last Date Labor and/or Materials Furnished:
January 10, 2023

Property Owner

Pagosa II 2017 LLC
5307 W Loop 289 Suite 302
Lubbock, Texas 79414

Amount of Claim
\$25,780.75

General Statement of kind of work done and/or materials furnished (Services): Interior Remodel

PAGOSA PARTNERS III LTD
5307 W LOOP 289 #STE 302
Lubbock, Texas 79414

Tenant

Bed Bath & Beyond
650 Liberty Ave
Union, New Jersey 07083

The Services were performed in construction of improvements at the following described Property ("Property"):

State of Texas
County: Lubbock County
2624 West Loop 289 Access Road
Lubbock, Texas 79407

Legal Property Description:

Situated in Lubbock County, Texas. Property ID: R325920; Geo ID: R929208-00025-00000-000;
Legal Description: WEST END TR B2

Notices Sent (If any):

The Claimant Delivered Notices of the Claim or Potential Claim to the Property Owner on the following dates, and through the following methods: Notice of Intent to Lien

Attachments to this Affidavit of Lien:

Exhibit A - Invoice

BEFORE ME, the undersigned authority, personally came and appeared, Chantel Jackson, a person of the full age of majority, who upon his/her oath did depose and state the following:

- A. That he/she is an authorized and disclosed agent of the above-identified Claimant. As the authorized and disclosed agent of the Claimant, he/she has been provided with the facts related to the claim asserted herein, and to the best of his/her knowledge, information and belief, the facts set forth herein are true and correct. He/she is competent and authorized to make this affidavit.
- B. The Claimant is above-identified, as is its mailing address and physical address. The Claimant was the Original Contractor on the project in question;
- C. Under its contract with the above-identified Property Owner, the Claimant agreed to provide the above-described Services for the installation of improvements to the above-described Property.
- D. The owner or reputed owner of the real property above-described and made subject to this Affidavit of Lien is above-identified as the Property Owner, as the owner's mailing address.
- E. The real property sought to be charged with a lien is the property above-described as the Property.

F. The total amount due to the Claimant is above-identified as the Amount of Claim. This amount is just, due and correct, after allowing all credits, offsets and payments. The Claimant claims a lien on the Property and its improvements to secure payment of its Amount of Claim.

G. The additional exhibits attached to this Affidavit of Lien (if any) are true and correct copies of the documents, the documents themselves offering the best evidence of its contents.

H. Each month in which Services were provided to the Property for which payment is requested is identified above as the Months Services Furnished.


I. The date each Notice of Claim was sent to the Owner, and the method of its deliver, is identified above as Dates Notices Sent.

State of Louisiana, County of Creole

Name of Claimant:

Advanced Systems Inc

Before Me, undersigned Notary Public, personally came and appeared Chantel Jackson, known to me to be the person whose name is subscribed to this foregoing instrument and acknowledged to me that the facts asserted therein were true, correct and accurate to the best of his/her information and belief, and that he/she executed the document for the purposes stated therein, and in the capacity stated therein, and as the act and deed of said Claimant. Subscribed to and sworn before me on the following date: March 23, 2023

Signed: 

Claimant, by Authorized Agent
Print Name: Chantel Jackson
Date: March 23, 2023



Notary Public



Exhibit A

APPLICATION FOR PAYMENT

INV # 22-0804 ②

CAP702
Page: 1 of 2

To:
Bed Bath and Beyond
650 Liberty Ave
Union, NJ 07083

PROJECT:
PO #21564
Bed Bath and Beyond #632
2624 W Loop 289
Lubbock, TX 79407

From Contractor:
Advanced Systems, Inc.
6627 Commerce Pkwy
Woodstock, GA 30189

VIA ARCHITECT:

Application No.: Application Date: Period To: Contract Date:
2 NOV 10, 2022 NOV 10, 2022 MAR 1, 2022
Project Nos:

Distribution List: ☐ Owner ☐ Construction Mgr
☐ Architect ☐ Field
☐ Contractor ☐ Other

CONTRACT FOR:

Contractor's Application for Payment

Application is made for payment as shown below, with attached Continuation Sheet.

1. Original Contract Amount: \$ 257,807.53
2. Net of Change Orders: \$ 0.00
3. Net Amount of Contract: \$ 257,807.53
4. Total Completed & Stored to Date: \$ 257,807.53
5. Retainage Summary:
a. 10.00 % of Completed Work \$ 0.00
b. 10.00 % of Stored Material \$ 0.00
Total Retainage: \$ 0.00
6. Total Completed Less Retainage: \$ 257,807.53
7. Less Previous Applications: \$ 232,026.78
8. Current Payment Due, This Application: \$ 25,780.75

9. Contract Balance (Including Retainage): \$ 0.00

CHANGE ORDER Activity	Additions	Subtractions
Total previously approved:	0.00	0.00
Total approved this Month:	0.00	0.00
Sub-Totals:	0.00	0.00
NET of Change Orders:	0.00	

CONTRACTOR'S CERTIFICATION:

The Contractor's signature here certifies that, to the best of their knowledge, this document accurately reflects the work completed in this Application for Payment. The Contractor also certifies that all payments have been made for work on previous Applications for Payment and also that the Current Payment is Due.

(Authorizing Signature)

Advanced Systems, Inc.

Date: NOV 10, 2022

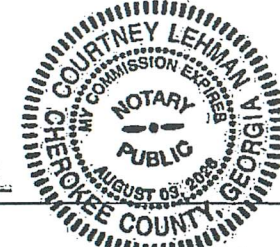
State Authorized: Georgia

County of: Cherokee

Subscribed and sworn to before
me this 10th day of NOV, 2022

Notary Public:

My Commission expires: 08/03/2026



ARCHITECT'S CERTIFICATION:

The Architect's signature here certifies that, based on their own observations, the Contract Documents and the information contained herein, this document accurately reflects the work completed in this Application for Payment. The Architect also certifies the Contractor is entitled to the amount certified for payment.

AMOUNT CERTIFIED:

(Architect's Signature) _____ Date: _____

Page 2 of 2 Pages

Architects Project#:

Software by: PEM Software Systems, Inc. 1-800-803-1315 Copyright 2007 ©

General Contractor Waiver of Lien

To All Whom It May Concern:

WHEREAS, the undersigned has been employed by:

Bed, Bath, & Beyond
650 Liberty Ave
Union, NJ 07083

To furnish services or labor or materials for work under a Contract for the construction of:
Bed Bath & Beyond, Project # 632 located at 2624 W Loop 289

In the City of: Lubbock
In the County of: Lubbock
In the State of: TX

NOW THEREFORE, this day of January 11th, for and in consideration of the sum of \$ 25,780.75 to be paid after approval of our request, the undersigned does hereby waive and release, contingent upon aforesaid payment, only to the extent of the aforementioned amount, any lien rights to, or claim of lien with respect to and on the monies or other considerations due or become due from the owner by virtue of said contract, on account of labor, services, materials, fixtures, apparatus, or machinery furnished by the undersigned to or for the above described premises but only to the extent of the payment aforesaid.

Contract Amount	\$ <u>257,807.53</u>
Approved Change Orders to Date	\$ <u>0</u>
Total Revised Contract	\$ <u>257,807.53</u>
Unconditional Waiver for Previous Payments Received:	\$ <u>232,026.78</u>
Conditional Waiver for Current Pay Application:	\$ <u>25,780.75</u>
Balance to Become Due (including retention):	\$ <u>0</u>

Contractor: Advanced Systems Inc

Signed Name: [Signature]
Printed Name: John Baldwin
Title: VP of Operations

State of: GA
County of: Cherokee

Subscribed and sworn to before me this day of 01/11/2023

Notary Public: [Signature]
My Commission expires: 08/03/2026



EXHIBIT I
Sworn Statement Form

State of.....	GA	Page: 1
County of.....	Cherokee	Project: -
Contractor: Advanced Systems, Inc.	Payment Due Date: _____	Store No.: 632
Contact: AJ Horney	(owner fill-in)	Period To: 11/10/2022
Phone No.: 770-591-4655		Project Number: _____
Tax ID No.: 58-1910908		Date of Contract: 1/7/2022
		Pay Application No.: 2

The AFFIANT, John Baldwin, being duly sworn on oath declares and says that he is a VP of Operations of Advanced Systems, Inc., that is the Contractor under the Contract with Bed Bath & Beyond, Inc., Owner, for certain improvements on the following described premises: 2624 W Loop 289, Lubbock, TX 79407 in Lubbock county, to wit.

That for the purpose of said contract, the following persons have been contracted with and have furnished or are furnishing materials for, and have done or are doing labor on said improvements. That there is due and to become due them respectively the amount set opposite their names for materials and labor as stated. That this statement is a full, true and a complete statement of all such persons, the amounts paid and the amounts due or to become due to each.

Company Name, Address and Telephone Number	Tax Identification Number	Kind of Work	Amount of Contract	Retention (Including current)	Net of Previous Payments	Net Amount This Payment	Balance To Become Due (incl. ret.)
Advanced Systems, Inc.	58-1910908	General Contractor	132,983.66	0.00	107,202.91	25,780.75	0.00
Advanced Systems, Inc.	58-1910908	Demolition		0.00			0.00
N/A		Excavation		0.00			0.00
N/A		Site Utilities		0.00			0.00
N/A		Site Paving		0.00			0.00
N/A		Concrete		0.00			0.00
N/A		Masonry		0.00			0.00
N/A		Structural Steel		0.00			0.00
Advanced Systems, Inc.	58-1910908	Carpentry		0.00			0.00
Chris Pham/SSD Consulting	47-4109274	Millwork	4,792.00	0.00	4,792.00	0.00	0.00
N/A		Insulation		0.00			0.00
N/A		Roofing & Sheetmetal		0.00			0.00
Advanced Systems, Inc.	58-1910908	Doors, Frames & Hardware		0.00			0.00
N/A		Auto Doors & Aluminum Store Front		0.00			0.00
Advanced Systems, Inc.	58-1910908	Metal Framing & Driveway		0.00			0.00

EXHIBIT I **Sworn Statement Form**

Company Name, Address and Telephone Number	Tax Identification Number	Kind of Work	Amount of Contract	Retention (including current)	Net of Previous Payments	Net Amount This Payment	Balance To Become Due (incl. ret.)
N/A		Ceramic Tile		0.00			0.00
Advanced Systems, Inc.	58-1910908	Acoustical Ceilings		0.00			0.00
N/A		Resilient & Carpet Flooring		0.00			0.00
N/A		Concrete Floor Coatings		0.00			0.00
Advanced Systems, Inc.	58-1910908	Painting & Vinyl Wallcovering		0.00			0.00
N/A		Toilet Accessories & Partitions		0.00			0.00
N/A		Dock Equipment		0.00			0.00
N/A		Vertical Transportation		0.00			0.00
N/A		Fire Protection		0.00			0.00
N/A		HVAC		0.00			0.00
G&R Professional Services	83-1416215	Electrical - labor only	120,031.87	0.00	120,031.87		0.00
TOTALS			\$257,807.53	\$0.00	\$232,026.78	\$25,780.75	\$0.00

Amount of Original Contract	<u>\$257,807.53</u>	Work Completed to Date:	<u>\$257,807.53</u>
Extras to Contract	<u>\$0.00</u>	Less 10% Retained:	<u>\$0.00</u>
Total Contract and Extras	<u>\$257,807.53</u>	Net Amount Earned:	<u>\$257,807.53</u>
Credits to Contract	<u>(\$0.00)</u>	Net Previously Paid:	<u>\$232,026.78</u>
Adjusted Total Contract	<u>\$257,807.53</u>	Net Amount of this Payment:	<u>\$25,780.75</u>
		Balance To Become Due (incl. ret.):	<u>\$0.00</u>

It is understood that the total amount paid to date plus the amount requested in this application shall not exceed <enter percent>% of the cost of work completed to date. I have also furnished Lien Waivers for all subcontractors, materials and labor under my contract.

Approved By: _____ Sr. Construction Project Manager	Date: _____	Signed this _____ 12th _____ day of January, _____ 2023 By: _____ Title: VP of Operations Contractor
Approved By: _____ Mike Yorio, Director of Construction	Date: _____	Subscribed and sworn to before me _____ 12th _____ day of January, _____ 2023 By: _____ Notary Public



Subcontractor Waiver of Lien

To All Whom It May Concern:

WHEREAS, the undersigned has been employed by:

Advanced Systems INC

To furnish services or labor or materials for work under a Contract for the construction of:
Bed Bath & Beyond, Project # 632 located at 2624 W Loop 289

In the City of: Lubbock

In the County of: Lubbock

In the State of: TX

NOW THEREFORE, this day of January 12th, for and in consideration of the sum of
\$ 4,792.00 to be paid after approval of our request, the undersigned does
hereby waive and release, contingent upon aforesaid payment, only to the extent
of the aforementioned amount, any lien rights to, or claim of lien with respect to and on
the monies or other considerations due or become due from the owner by virtue of said
contract, on account of labor, services, materials, fixtures, apparatus, or machinery
furnished by the undersigned to or for the above described premises but only to the
extent of the payment aforesaid.

Contract Amount	\$ <u>4,620.00</u>
Approved Change Orders to Date	\$ <u>172.00</u>
Total Revised Contract	\$ <u>4,792.00</u>
Unconditional Waiver for Previous Payments Received:	\$ <u>4,792.00</u>
Conditional Waiver for Current Pay Application:	\$ <u>0</u>
Balance to Become Due (including retention):	\$ <u>0</u>

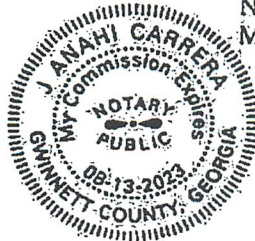
Subcontractor: SSD Consulting LLC

Signed Name: [Signature]
Printed Name: Chris Pham
Title: President

State of: Georgia
Country of: USA - Gwinnett

Subscribed and sworn to before me this day of 12 JANUARY 2023

Notary Public: [Signature]
My Commission expires: 13 AUG 2023



Subcontractor Waiver of Lien

To All Whom It May Concern:

WHEREAS, the undersigned has been employed by:

Advanced Systems INC

To furnish services or labor or materials for work under a Contract for the construction of:
Bed Bath & Beyond, Project # 632 located at 2426 W Loop 289

In the City of: Lubbock

In the County of: Lubbock

In the State of: TX

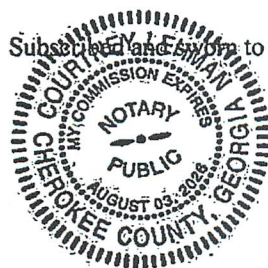
NOW THEREFORE, this day of 01/11/2023, for and in consideration of the sum of \$ 120,031.87 to be paid after approval of our request, the undersigned does hereby waive and release, contingent upon aforesaid payment, only to the extent of the aforementioned amount, any lien rights to, or claim of lien with respect to and on the monies or other considerations due or become due from the owner by virtue of said contract, on account of labor, services, materials, fixtures, apparatus, or machinery furnished by the undersigned to or for the above described premises but only to the extent of the payment aforesaid.

Contract Amount	\$ <u>115,531.87</u>
Approved Change Orders to Date	\$ <u>4,500.00</u>
Total Revised Contract	\$ <u>120,031.87</u>
Unconditional Waiver for Previous Payments Received:	\$ <u>120,031.87</u>
Conditional Waiver for Current Pay Application:	\$ <u>0</u>
Balance to Become Due (including retention):	\$ <u>0</u>

Subcontractor: G&R Professional Services

Signed Name: Robert Phillips
Printed Name: Robert J Phillips
Title: Owner

State of: GA
Country of: Cherokee



Subscribed and sworn to before me this day of 01/12/2023

Notary Public: _____
My Commission expires: 08/03/2026

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



Kelly Pinion

Kelly Pinion, County Clerk
Lubbock County, TEXAS
03/24/2023 10:15 AM
FEE: \$62.00
2023010669